



BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 070041

Petitioner, Children's Medical Center Corporation, applied to the Board of Appeals for zoning relief for renovations, to construct an addition and to establish and maintain a Lodging House Facility for parents and siblings of children undergoing care at Children's Hospital Boston. The proposed facility is located at 241 Kent Street, Brookline, Massachusetts.

On May 24, 2007, the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed June 28, 2007 at 7:45 p.m. in the Selectmen's Hearing Room, 6<sup>th</sup> Floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published June 7 and 14, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

**Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Petitioner: WEINSTEIN, Charles/CHILDREN'S HOSPITAL, BOSTON**

**Location of Premises: 241 KENT ST BRKL**

**Date of Hearing: 06/28/2007**

**Time of Hearing: 07:45 p.m.**

**Place of Hearing: Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a special permit and/or variance from:

- 1) 4.07; Table of Use Regulations,  
Use #7, Variance Required.  
Use #49b, Special Permit Required.
- 2) 4.10.2.b; Floodplain Overlay District, Special Permit Required.
- 3) 5.09.2e; Design Review, Special Permit Required.
- 4) 5.20; Floor Area Ratio, Variance Required.
- 5) 5.30; Maximum Height of Buildings, Variance Required
- 6) 5.31.2; Exceptions to Maximum Height Regulations, Special Permit Required.
- 7) For the Design of All Off-Street Parking Facilities:  
6.04.2.d; Variance Required.  
6.04.4.b; Variance Required.  
6.04.5.c.2; Variance Required.  
6.04.5.c.4; Variance Required.  
6.04.12; Special Permit Required.
- 8) 8.02.2; Alteration or Extension, Special Permit Required.
- 9) 9.09.1.d; Conditions for the approval of Use Variance, Special Permit Required

Of the Zoning By-Law to construct renovations and additions and to maintain a Lodging House Facility for parents and siblings of children at Children's Hospital at **241 KENT ST BRKL**.

Said Premise located in a SC-7 District.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*



*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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Due to construction at Town Hall, the location of the meeting was changed to Room 202, Old Lincoln School, 194 Boylston Street, Brookline, Massachusetts. Notice of the change was posted at Town Hall, including outside the advertised hearing room. Present at the hearing were Chair, Enid Starr and Board members Bailey Silbert and Jesse Geller. The petitioner's proposal was presented through its attorney, Marilyn L. Sticklor of Goulston & Storrs, PC, 400 Atlantic Avenue, Boston, Massachusetts.

Ms. Sticklor described the petitioner's proposal as follows: The petitioner proposes to modify the existing building at the property and to change its use from a fraternity house to a 23-room lodging house for parents of children receiving treatment at Children's Hospital Boston (including a resident manager's suite). The project will involve the renovation of the existing building and off-street parking area, and the construction of a three story addition at the rear of the property. Ms. Sticklor indicated that the property's current fraternity use was allowed under a 1953 variance, and that the current building was constructed prior to 1889, is an historic asset (currently in significant disrepair) and is nonconforming with respect to height and side yard. The property is in the SC-7 District and roughly two-thirds of the property is in the Floodplain Overlay District.

According to Ms. Sticklor, the project requires: (i) Special Permit for Work in the Floodplain District (Section 4.07.49B and Section 4.10); (ii) Special Permit for Design

Review (Section 5.09); (iii) Special Permit for Establishing Height for Lot with Non-Typical Topography (Section 5.31); (iv) Special Permit to permit the substitution of dimensional requirements for Off-Street Parking Facility Design Requirements (Section 6.04); (v) Special Permit for altering of extending a non-conforming structure (Section 8.02.2); (vi) Variance for Lodging House Use (Section 4.07 and Section 9.09); (vii) Variance for FAR of 0.37, in excess of the permitted FAR of 0.35 (Section 5.20 and Table 5.01).

With respect to the various special permits required, Ms. Sticklor observed, as follows:

- (1) Special Permit for Work in Flood Plain: Ms. Sticklor stated that the project does not impair the flood storage capacity, and presented the Board with a copy of a Determination of Inapplicability issued by the Conservation Commission, dated June 26, 2007;
- (2) Special Permit for Design Review: Ms. Sticklor stated that the project meets the community impact and design review standards, and that the Planning Board had recommended approval;
- (3) Special Permit to Establish Height for Lot with Non-Typical Characteristics: Ms. Sticklor stated that the height of 48 feet to the top of the gable enclosing the elevator penthouse matched the height of the existing non-conforming improvements (noting that an elevator penthouse is generally excluded from height limitations as long as it does not exceed the as of right height by more than 10 feet, which would have permitted a height of 45 feet), and that the Site has a steep slope and uneven configuration which makes measurement difficult; and
- (4) Special Permit to substitute parking dimensions: Ms. Sticklor stated that the reconfigured parking serves an existing structure and is located so as to minimize visibility and effect on the community.

With respect to the use variance finding required by Section 9.09, Ms. Sticklor observed that the existing building on the property was built in or around 1889, and has



several features of historic and architectural significance, including an ornate front façade and other intricate architectural elements. The petitioner will restore the property in an historically accurate manner, including the repair and/or reconstruction of the front façade and the reconstruction of front porch features, both to the extent reasonable. According to Ms. Sticklor, this type of repair, and maintenance of the property as a visual and taxable asset, would not be accomplished by an as-of-right use.

With respect to the general findings required for a variance under M.G.L. Chapter 40A, Section 10, Ms. Sticklor observed that the property has at least two characteristics relating to the soil conditions, shape or topography that do not generally affect the SC-7 District. First, the property has an uneven topography, including an extremely steep grade near the rear of the property. Second, the property abuts an MBTA Green Line subway track.

Ms. Sticklor also stated that a literal enforcement of the provisions of the Zoning By-Law would make the renovation and use of the property as a facility to provide housing for parents receiving treatment at Children's Hospital Boston unfeasible, because the provisions of the Zoning By-Law would not allow the petitioner to accomplish its program goals. Moreover, because the project is being constructed as a fully ADA-compliant facility, the addition of the three-story elevator and related lobbies on each floor (along with larger ADA compliant bathrooms) create additional square footage that contribute to increasing the project's FAR by the *de minimus* amount of 0.02 by which it exceeds the as-of-right FAR.

Ms. Sticklor then noted that the project contributes to the public good and does not nullify or derogate the intent or purpose of the Zoning By-Law. The project substitutes a use of providing housing to the parents of hospitalized children for the previous fraternity use. Further, the project will achieve the restoration of an architectural asset and will allow a

deteriorated historic asset to be put in good repair. The contemplated addition will be substantially screened from Kent Street, and the project is consistent with the residential character of the surrounding neighborhood. The project is also consistent with the Zoning By-Law's stated purpose of promoting the public health, safety, convenience and welfare, and the Zoning By-Law's specific goals of: (i) conserving the value of land and buildings; (ii) providing for adequate light and air; (iii) reducing the hazards from fire and other danger; (iv) encouraging the preservation of historically and architecturally significant structures; and (v) encouraging housing opportunities for people of all income levels.

Charles Weinstein of Children's Medical Center Corporation, 300 Longwood Avenue, Boston, Massachusetts, then addressed the process by which the details of the project were developed.

Mr. Weinstein explained that the parents of children receiving care at Children's Hospital Boston often travel long distances to Boston and make extended stays in Boston. The petitioner's current facility for housing those parents is inadequate to fulfill the demand for such housing and lacks residential comforts and amenities, given that it is on an upper floor of an office building. The project will rectify both of these shortcomings, by providing a greater number of beds and a more residential atmosphere.

Mr. Weinstein then stated that the petitioner had met with the project's neighbors over the course of many months and, as a result, has made various and significant modifications to the project. The petitioner has specifically agreed to: (i) restore certain of the property's historic elements, including the repair and/or reconstruction of the property's front façade and reconstruction of the property's front porch; (ii) construct a larger, more permanent resident manager dwelling unit; (iii) include certain landscaping and screening desired by abutters;



(iv) sponsor and create a Kent Street Neighbors Advisory Board to serve as a liaison with Children's Hospital Boston in matters relating to operation of the project; and (v) execute a deed restriction for the benefit of three (3) nearby neighbors' properties, restricting further expansion at the property until 2032, which would require consent of two (2) of the three (3) neighbors in order to be modified.

Martin Batt of Martin Batt Architects, 633 Highland Avenue, Needham, Massachusetts, then presented the project's design.

Using visual aids, Mr. Batt reviewed the current condition of the property, including the disrepair of the existing structure and the property's steep grade. Mr. Batt explained that the addition will provide space primarily for living facilities and will be substantially screened from Kent Street. A new elevator will be constructed, and will be concealed in the roof details of the building so as not to increase the perceived height of the building.

Mr. Batt then displayed a photograph of the property from the 1890s, and explained that the existing building was built in or around 1889 in the Chateausque Revival style and has several features of historic and architectural significance, including an ornate front façade and other intricate architectural elements. The historic features of the property are currently in disrepair, and a portion of the original front porch has been demolished. In connection with the project, the petitioner will make reasonable efforts to repair and/or reconstruct the front façade of the building and will use materials consistent with the building's historic character and design features throughout the exterior renovation. In addition, the petitioner will reconstruct the front porch of the building to more closely resemble the front porch's original form.

Finally, Mr. Batt explained that the parking area will be reconstructed with the addition of two handicapped parking spaces and substantial landscaping and screening.

The Chair of the Board called for any comments from the public.

Ann Gelbspan of 247 Kent Street, Brookline, Massachusetts, an abutter of the property, then spoke in support of the project. Ms. Gelbspan stated that she is in favor of the project because it represents an opportunity to restore a deteriorating building with a use that is preferable to many other potential uses of the property.

Richard Gass of 259 Kent Street, Brookline, Massachusetts, a nearby neighbor of the property, then also spoke in support of the project. Mr. Gass stated that, although he initially had concerns regarding the institutional nature of the proposed use, he is satisfied with the petitioner's efforts to give the project a more residential feel, to expand the resident manager dwelling unit and to renovate the property's existing structure.

The Planning Board through Polly Selkoe, the Assistant Director for Regulatory Planning, presented the comments of the Planning Board as contained in its report dated June 14, 2007, which comments are as follows:

The Planning Board supports this proposal to preserve this architecturally attractive building, construct an addition to the rear of it, and provide housing for parents of children being treated in the hospital. The rear addition will not impact the view from the street and the existing building, which is in substantial disrepair, will undergo a significant historic renovation consistent with its architectural style, including a rebuilding of the front porch entry similar to the one shown in an 1890's photo. The parking area's 11 parking spaces are in excess of the nine spaces required for a 23-room lodging house under zoning.

The petitioner has had many meetings with the neighborhood group, as well as individual neighbors, and has changed the design and floor plans to address their concerns by providing landscape screening and enlarging the resident manager's living space to provide a more permanent residential unit on site. The petitioner also agreed to create and sponsor a Kent Street Neighbors Advisory Board to serve as a liaison to the Hospital and to have a deed restriction prohibiting further expansion of the property until 2032.



Therefore, if the Board of Appeals finds that the statutory requirements for a variance and use variance are met, the Planning Board unanimously recommends approval of the site/landscape plan dated April 12, 2007 by Walker-Kluesing Design Group, and elevations dated April 12, 2007 by martinBattarchitects, subject to the conditions set out below.

1. Prior to the issuance of a building permit, final design of facades, rooftop details, including elevator penthouse, colors, materials, and finished facing of retaining walls shall be subject to the review and approval of the Assistant Director of Regulatory Planning in consultation with the Preservation Commission.
2. Prior to the issuance of a building permit, a final certified site plan, including landscaping, parking area layout, fencing, walls, mechanical equipment location, exterior lighting, shall be subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a satisfactory drainage and water retention plan shall be reviewed and approved by the Conservation Administrator.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles and rodent and dust control, shall be submitted for review and approval by the Transportation Director, and an approved copy submitted to the Planning and Community Development Department.
5. One identification sign shall be allowed subject to the review and approval of the Assistant Director of Regulatory Planning.
6. Prior to the issuance of a building permit, the applicant shall negotiate an agreement between the Hospital and the Town's Director of Finance related to Payment in Lieu of Taxes (PILOT) to the Town, in a form subject to the review and approval of Town Counsel, and approved by the Board of Selectmen.
7. Prior to the issuance of a building permit, the applicant shall execute and record with the Norfolk County Registry of Deeds a declaration of restrictions benefiting three parcels abutting or in the immediate vicinity of the property and constraining future development at the property, until January 1, 2032, without the consent of the owners of two of the three benefited parcels, in a form subject to the review and approval of Town Counsel.
8. Prior to the Certificate of Occupancy, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including fencing, lighting, and location and screening of utilities; 2) building elevations and floor plans stamped and signed by a registered architect; and 3) evidence of submittal of the Board of Appeal decision to the Registry of Deeds.



The Building Commissioner, through Frank Hitchcock on the Commissioner's behalf, expressed support for the project stating that the Building Department has no concern with respect to the recommendations contained in the Planning Board report. Mr. Hitchcock noted that the property has several unique characteristics, including that: (i) the property has an irregular topography; (ii) a portion of the property falls within the 100-year floodplain; (iii) the existing structure is an historic asset in significant disrepair; (iv) the property abuts an MBTA Green Line subway track; (v) the proposed addition is in an area with a sharp change in grade; and (vi) the project will require working around the constraints of an existing historic structure, which contributes to the increase in FAR.

The Board having considered the foregoing information, having reviewed the plans and the relief required, fully supports the proposed change in use and rear addition to the property, as being consistent with the positive redevelopment of an historic structure that has suffered significant neglect and a property that has various unique characteristics, and approves the project substantially as shown on the site/landscape plan dated April 12, 2007, by Walker-Kluesing Design Group, and the elevations dated April 12, 2007, by Martin Batt Architects, subject to the conditions set out below.

With respect to the required special permits under Section 4.07/Section 4.10, Section 5.09, Section 5.31, Section 6.04 and Section 8.02 of the Zoning By-Law, the Board makes the following findings pursuant to Section 9.05, and other relevant provisions, of the Zoning By-Law:

1. The specific site is an appropriate location for such a use, structure or condition.
2. The use as developed will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.



5. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.
6. The project meets the community impact and design review standards set forth in Section 5.09(4) of the Zoning By-Law.
7. The project meets the standards for a special permit for development in the Floodplain, as the project will not impair the ability of any special flood hazard areas to carry and discharge flood waters and will not displace any water retention capacity.
8. As a result of non-typical lot topography the application of Section 5.30 of the Zoning By-Law relating to the measurement of height is unclear, and the height of the project approximates the requirements of Section 5.30 and provides the same standard of amenity to nearby properties as would be provided by the application of Section 5.30 in the absence of the non-typical characteristics.
9. New parking facilities are being installed to serve an existing structure, and the proposed parking facility dimensions are necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building.

With respect to the required variances from Section 4.07/Section 9.09 and Section 5.20/Table 5.01 of the Zoning By-Law, the Board makes the following statutory findings and findings pursuant to Section 9.09 of the Zoning By-Law:

1. The property has unique characteristics relating to soil conditions, shape or topography that especially affect the property, but do not generally affect the SC-7 District, in that a substantial portion of the property falls within the floodplain which uniquely affects the soil conditions, the existing structure is an unique historic asset in significant disrepair, the property has an uneven and steep grade and the property has a rear yard abutting an MBTA Green Line subway track.
2. A literal enforcement of the provisions of the Zoning By-Law would involve substantial hardship to the applicant.
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.
4. A structure exists on the property of appearance compatible with the vicinity and of historical and architectural significance, that will be preserved in a manner sufficient to justify the relief granted and that can reasonably be maintained as a visual and taxable asset only if the nonconformity of use is permitted.

Therefore, the board voted unanimously to grant the requested special permits under



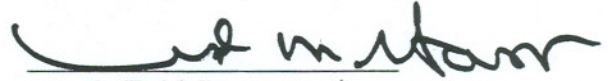
Section 4.07/Section 4.10, Section 5.09, Section 5.31, Section 6.04 and Section 8.02 of the Zoning By-Law and variances from Section 4.07/Section 9.09 and Section 5.20/Table 5.01 of the Zoning By-Law, subject to the following conditions:

1. Prior to the issuance of a building permit, final design of facades, rooftop details, including elevator penthouse, colors, materials, and finished facing of retaining walls shall be subject to the review and approval of the Assistant Director of Regulatory Planning in consultation with the Preservation Commission.
2. Prior to the issuance of a building permit, a final certified site plan, including landscaping, parking area layout, fencing, walls, mechanical equipment location, exterior lighting, shall be subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a satisfactory drainage and water retention plan shall be reviewed and approved by the Conservation Administrator.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles and rodent and dust control, shall be submitted for review and approval by the Transportation Director, and an approved copy submitted to the Planning and Community Development Department.
5. One identification sign shall be allowed subject to the review and approval of the Assistant Director of Regulatory Planning.
6. Prior to the issuance of a building permit, the applicant shall negotiate an agreement between the Hospital and the Town's Director of Finance related to Payment in Lieu of Taxes (PILOT) to the Town, in a form subject to the review and approval of Town Counsel.
7. Prior to the issuance of a building permit, the applicant shall execute and record with the Norfolk County Registry of Deeds a declaration of restrictions benefiting three parcels abutting or in the immediate vicinity of the property and constraining future development at the property, until January 1, 2032, without the consent of the owners of two of the three benefited parcels, in a form subject to the review and approval of Town Counsel.
8. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including fencing, lighting, and location and



screening of utilities; 2) building elevations and floor plans stamped and signed by a registered architect; and 3) evidence of submittal of the Board of Appeal decision to the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

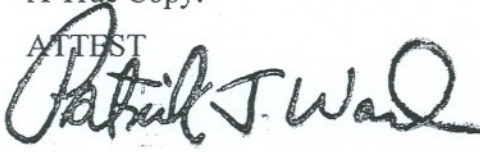


Enid Starr

Filing Date: July 12, 2007

A True Copy:

ATTEST



Patrick J. Ward

Clerk

Board of Appeals